

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Docket No. HWCA 2004-0660

In the Matter of:

Atlas Pacific Corporation
2803 South Industrial Drive
Bloomington, California 92377

EPA ID No. CAL000074687

Respondent

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Atlas Pacific Corporation (Respondent) enter into this Consent Order and agree as follows:

1. The Respondent is the Importer of Record for twenty-six (26) cubic yard boxes of copper dross produced in Mexico. The Department classifies the copper dross as hazardous waste. The copper dross was imported into the U.S. at the U.S. Customs and Border Protection Tecate Port of Entry.

2. The Respondent is a hazardous waste generator with a facility located at 2803 South Industrial Drive, Bloomington, California 92377.

3. The Department conducted a truck-stop inspection of a shipment of copper dross imported by the Respondent at the U.S. Customs and Border Protection Port of Entry, Tecate facility, on February 11, 2004.

4. The Department alleges the following violations:

4.1. The Respondent violated California Code of Regulations, title 22, section 66262.11 in that on or about February 11, 2004, Respondent failed to

properly characterize a shipment of twenty-six (26) cubic yard boxes containing copper waste. The cubic yard boxes were transported on an open flat bed trailer with open containers which created a significant potential of a release to the environment, and should have been managed as a hazardous waste in accordance with the applicable provisions of the Hazardous Waste Control Laws and the implementing regulations.

4.2. The Respondent violated California Code of Regulations, title 22, section 66262.31 in that on or about February 11, 2004, Respondent failed to label or clearly mark twenty-six (26) hazardous waste containers.

4.3. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent does not admit the violations alleged above.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1. Respondent has corrected the violations cited above.

Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

9.2. Respondent shall manage, store, and dispose of hazardous waste in accordance with the Hazardous Waste Control Law (Health and Safety Code section 25100 et seq. and title 22, California Code of Regulations, division 4.5).

10. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously:

To:

Yvonne Sanchez,
Branch Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

To:

Juan Jimenez, Chief
Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

To:

Ramon B. Perez
Senior Staff Counsel
9174 Sky Park Court, Suite 150
San Diego, California 92123

10.1. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.2. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order,

Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.3. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.4. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.5. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.6. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

10.7. Communications: All communications regarding the terms and conditions of this Consent Order shall be done by the respective attorneys.

PAYMENTS

11. Respondent shall pay a total of \$15,000.00. Of this amount, \$7,000.00 is reimbursement of the Department's costs, and \$8,000.00 is a penalty. \$5,000.00 of the penalty will be waived in its entirety on condition that Respondent send one or more employees to the California Compliance School (Modules I - IV).

Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 180 days of the date of this Consent Order. If Respondent does not provide evidence of such training within 180 days of the effective date of this Consent Order, Respondent shall pay the additional \$5,000.00 to the Department as a penalty. The 180-day period may be extended by the Department upon a written request from the Respondent demonstrating good cause.

Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the reimbursement of the Department's costs and penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the checks shall be sent:

To:

Yvonne Sanchez,
Branch Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

To:

Juan Jimenez, Chief
Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

11.1. If Respondent fails to make the payments as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: January 5, 2006

Original signed by Greg Woolfson
President
Atlas Pacific Corporation

Dated: January 23, 2006

Original signed by Juan Jimenez
Juan Jimenez, Chief
Border Unit
Statewide Compliance Division
Department of Toxic Substances Control